

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014110449

ORDER FOLLOWING PREHEARING
CONFERENCE AND SETTING DUE
PROCESS HEARING DATES

On January 12, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Colleen A. Syder and F. Richard Ruderman, Attorneys at Law, appeared on behalf of Student. Cathy S. Holmes, Attorney at Law, appeared on behalf of Elk Grove Unified School District. The PHC was recorded. Based on discussion with the parties, the ALJ issues the following order:

1. Order Denying Elk Grove's Motion To Continue the Due Process Hearing: On January 8, 2015, Elk Grove filed a written motion to continue the due process hearing in this matter based on various grounds. The attorneys for both parties argued and discussed the motion to continue the hearing with the ALJ. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).) The ALJ reviewed Elk Grove's request for good cause and considered all relevant facts and circumstances. Elk Grove's motion to continue the due process hearing is denied, as Elk Grove failed to establish good cause for a continuance based on the grounds contained in Elk's Grove's motion to continue.

2. Order Granting Parties' Joint Request To Continue the Due Process Hearing: At the PHC, both parties jointly requested a short continuance of the due process hearing in order to: 1) finalize their ongoing discussion regarding settlement; and 2) accommodate a

personal emergency involving one of the attorneys for the parties. Good cause is established for a short continuance of the due process in this matter, and the parties' request to continue the hearing is granted. The hearing is continued and set as indicated below.

3. Hearing Dates, Times, and Location. The hearing in this matter shall take place at **9510 Elk Grove Florin Road, Elk Grove, CA 95624**. The hearing shall take place on January 20 - 22, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., except for January 20 when the hearing will begin at 1:30 p.m.

At a minimum, the hearing room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the Elk Grove's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. Elk Gove shall ensure that all parties, witnesses and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities which will be used during the hearing are accessible. **In addition, Elk Grove shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 .), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.**

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

4. Issues and Proposed Resolutions. The issues at the due process hearing are those that were alleged in Student's request for due process hearing (complaint).¹ As necessary, the issues have been clarified and reframed for clarity, as set forth herein below:

- 1) During the 2014-2015 school year, did Elk Grove procedurally deny Student a Student a free appropriate education by:
 - a. failing to make a clear written offer in Student's April 8, 2014 individualized education program because the IEP: 1) failed to specify the setting where Student's specialized academic instruction would be provided; 2) failed to specify the purposes for which services were

¹ Any issue(s) that is not identified in the complaint, and/or permitted by this order, shall be included only upon OAH granting a motion to amend the complaint. All amendments to the complaint shall comply with the requirements of California Education Code section 56502, subdivision (e), and such amendment will restart all applicable timelines for the due process hearing in this matter. (20 U.S.C. § 1415(c)(2)(E)(ii).)

offered; and 3) failed to specify the frequency and duration of the para-educator support offered to Student; and

- b. failing to ensure that an appropriate IEP offer was in place by the start of the 2014-2015 school year?

2) During the 2014-2015 school year, did Elk Grove deny Student a FAPE by:

- a. failing to provide an adequate transition plan, and failing to provide adequate/appropriate transition services in the areas of independent life skills, community access, budgeting, meal preparation, self-care, and self-advocacy;
- b. failing to provide an appropriate workability program because: 1) the Gamestop staff where Student was placed were untrained; and 2) Student was not allowed to perform any job functions other than shelving games;
- c. failing to develop measurable goals based on sufficient baselines in the areas of mathematical problem solving, written language, employment, education/training and pragmatics;
- d. failing to develop goals in all areas of needs;²
- e. failing to offer and provide Student with direct instruction in the area of executive functioning;
- f. failing to provide adequate instruction to Student in the areas of 1) English; 2) community-based instruction; and 3) independent life skills;
- g. failing to provide adequate related services and support in the areas of: 1) speech and language; 2) assistive technology; and 3) behavior intervention; and
- h. failing to implement Student's goals, and failing to provide the services and support, and accommodations and modifications, contained in Student's last consented to IEP dated April 26, 2011?

² The areas of needs identified in the complaint are social skills, task initiation, work completion, organization, reading comprehension, writing, vocabulary development, independent life skills, community access, social and emotional functioning, and workability.

PROPOSED RESOLUTION: As proposed resolutions, Student seeks an order finding him the prevailing party, and directing Elk Grove to convene an appropriate IEP team meeting to develop appropriate goals, and develop and provide an appropriate transition plan and services for Student. Also, Student requests that Elk Grove: 1) fund his enrollment in an online English coursework and provide a credentialed teacher to support his completion of the program; 2) provide Student with compensatory education in the form of individual tutoring in academics, independent living skills, and direct instruction in executive functioning; and 3) provide other relief as ordered by OAH.

5. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits in a way that makes clear the party offering it (such as “S1” or “D2”). Each exhibit shall be internally paginated, by exhibit, or all pages of a party’s exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

6. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party’s prehearing conference statement, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and prepare a joint proposed witness schedule. The proposed witness schedule shall identify the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony.

7. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

8. Telephonic Testimony. A party seeking to present a witness by telephone shall move in advance for leave to do so; shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. Neither party requested telephonic testimony.

9. Electronic Recording of Hearing.

a. Audio Recording. The following conditions apply to any recording: 1) OAH's recording is the only official recording; 2) the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

10. Timely Disclosure of Witnesses/Exhibits. The parties are to comply with Education Code section 56505, subdivision (e)(7), that provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

11. Order of Presentation of Evidence. Student shall present his case first followed by Elk Grove. If a witness is to be called by both parties, counsel shall be prepared to ask their questions of the witness – direct and cross so as to prevent the need for the witness to be recalled.

12. Motions. Unless addressed herein, no other pretrial motion is pending. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference.

13. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

14. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

15. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

16. Special Needs and Accommodations. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at **916-263-0880 or OAHADA@dgs.ca.gov** as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>. At present neither party has requested any special accommodation for any witness or party, or for interpreter services.

17. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

18. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

19. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: January 13, 2015

/s/

ADENIYI AYOADE

Administrative Law Judge

Office of Administrative Hearings